

REMARKS

The following remarks are responsive to the Office Action of August 18, 2005.

Claims 1-35 are pending as a result of this response.

In the August 18, 2005 Office Action, claims 1, 2, 4-9, 11, 13, 15, 16, 19, 20, 22, 23, and 24 were rejected under 35 U.S.C. 103(a) as obvious over Collier (U.S. Patent No. 6,880,711) in view of Leamon, Jr. (U.S. Patent No. 6,553,687). Claims 3 and 17 were also rejected under 35 U.S.C. 103(a) as obvious over Collier (U.S. Patent No. 6,880,711) in view of Leamon, Jr. (U.S. Patent No. 6,553,687) as applied to claim 1 and further in view of Lancer (U.S. Patent Publication No. 2002/0194746). In addition, the drawings were objected to under 37 CFR 1.83(a).

These rejections are traversed, and reconsideration is respectfully requested.

With respect to the objections to the drawings, it is respectfully pointed out that the identified claim features are illustrated in the drawings. In particular, the drawings illustrate (1) tubular members being rotated within a range of positions; this is clearly illustrated with the curved arrows in Fig. 3, (2) means for conveying a flow of ionized air; this is clearly illustrated as the fan 80 in Fig. 2, and (3) slidable gates disposed on the top surface of the based to regulate airflow to the tubular members; these are clearly illustrated, for example, as element 85 in Fig. 1 or Fig. 2. Since it appears that the identified elements are illustrated in the drawings, it is respectfully requested that the objections to the drawings be withdrawn.

With respect to the rejections under 35 U.S.C. 103(a), the Office Action states that Collier substantially discloses the present invention with the exception of at least one support member located proximate to the apertures for maintaining a piece of sports equipment or apparel at a predetermined distance from the apertures. The Office Action relies on Leamon to provide this missing element. According to the Office Action, "it would have been obvious to one of ordinary skill in the art to modify Collier by including at least one support member located proximate the apertures for maintaining a piece of sports equipment or apparel at a predetermined distance from the apertures and allowing a flow of air to be conveyed to the surface of the sports equipment as taught by Leamon for the purpose [for the purpose] of providing improved air flow so that the apparatus will process articles more effectively." (Office Action, page 4).

The Office Action fails to establish a *prima facie* case of obviousness. In particular, the obviousness rejections do not meet the standards set forth in MPEP 2143.01 for

combining prior art references. In essence, the Office Action merely identifies a claim element that is absent from Collier, and then conveniently concludes – without any support from the prior art – that it would have been obvious to modify Collier in the manner recited by the claims. As clearly warned against in the MPEP, “The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggested the desirability of the combination.” MPEP 2143.01, citing *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir.1990). Applicants further point out that the MPEP also warns that “A statement that modification of the prior art to meet the claimed invention would have been ‘well within the ordinary skill of the art at the time the claimed invention was made’ because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references.” MPEP 2143.01, citing *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993). Clearly, the Office Action has not established a *prima facie* case of obviousness and on that basis alone, Applicants respectfully request that the rejections under 35 U.S.C. 103(a), all of which suffer from the deficiency of the rejection to claim 1, be withdrawn.¹

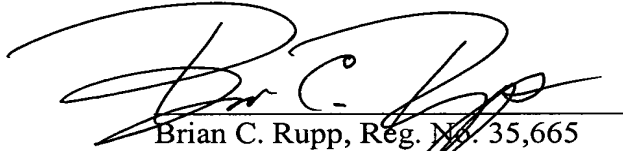
Moreover, the Office Action fails to recognize that Collier expressly teaches away from the present invention. Collier states “[a]ll of the appendages 16 have a series of apertures 56 which extend through the shell 14 between an external face 58 being in direct contact with the athletic equipment and clothing 12 . . .” (col. 2, l. 66 to col. 3, l. 2). In direct contrast, however, claims that the “sports equipment or apparel [be maintained] at a predetermined distance from the apertures.” (Claim 1) Thus, this is not a situation where the primary prior art reference (Collier) merely has a missing element that is found in a secondary prior art reference (Leamon). This is a situation where the primary prior art reference contains an express contradictory teaching to the claimed invention. In particular, Collier expressly teaches “direct contact” and the claimed invention requires a “predetermined distance.” Thus, the prior art clearly teaches away from the claimed invention and the obviousness rejection should be withdrawn.

¹ Applicants point out that all of the obviousness rejections of the independent claims suffer from the same failure to establish a *prima facie* case of obviousness. In particular, the Office Action states on Page 5 that “claim 8 is rejected on the same ground as for claim 1,” and on Page 6 that “Claims 5 and 10 are rejected . . . as applied to claim 1 . . .” and that the “rejection of claim 1 also applies here.” Thus, all of the obviousness rejections should be withdrawn for the failure to establish a *prima facie* case of obviousness.

In re Appln. of Rosseau et al.
Application No. 10/805,939
Response to Office Action of August 18, 2005

Based upon the foregoing remarks, applicant respectfully requests the examiner to reconsider the application and withdraw the rejections. The application is considered in good and proper form for allowance, and the Examiner is respectfully requested to pass this application to issue. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Brian C. Rupp', is written over a horizontal line.

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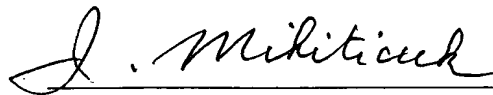
Date: November 17, 2005

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CERTIFICATE OF MAILING

I hereby certify that this RESPONSE TO OFFICE ACTION OF AUGUST 18, 2005 (along with any documents referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

Date: November 17, 2005

A handwritten signature in cursive script, reading "I. Mikitiouk", written over a horizontal line.

Irina L. Mikitiouk

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